

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

CARROL ED SANDERS

PLAINTIFF

v.

No. 1:95cv237-D-D

JOHNNY NUNLEY, LARRY WILSON,  
BENNY PARRISH, STEVE GRISHAM,  
and DEBORAH GRISHAM

DEFENDANTS

OPINION

Presently before the court are (1) Defendant Benny Parrish's "Motion for Judgment Notwithstanding the Verdict or in the Alternative for Remittitur," and (2) "Defendant Tishomingo County's Motion for Judgment as a Matter of Law, or in the Alternative, Motion for New Trial, Alternatively, Motion for Remittitur." After considering these motions, the court finds that the Defendant Tishomingo County's motion for remittitur should be granted and that the remainder of the motions should be denied.

Motions by Mr. Parrish

Mr. Parrish seeks judgment as a matter of law as to punitive damages or a remittitur as to punitive damages.

Punitive damages are available in a § 1983 action when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others. Although a jury has wide discretion, a district court may refuse to uphold a punitive damage award when the amount is so high as to shock the judicial conscience and constitute a denial of justice. If a district court finds that a verdict is excessive, it may order a new trial limited to damages, or, under the practice of remittitur, may condition a denial of a motion for a new trial on the plaintiff's accepting damages in a reduced amount.

Lee v. Edwards, 101 F.3d 805, 808 (5<sup>th</sup> Cir. 1996) (citations and quotation omitted).

Only addressing the issue of damages, the jury in this action reached a verdict against Mr. Parrish for \$771.90 in compensatory damages and \$15,000.00 in punitive damages. The court entered judgment against Mr. Parrish in accordance with that verdict. Now Mr. Parrish argues that the award of punitive damages was excessive under the authority of BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996). See Lee, 101 F.3d at 809 n.2 (“Although Gore examined the excessiveness of punitive damages awarded in a state court, the universal premise of the Supreme Court’s due process reasoning suggests that the same considerations apply equally to the review of punitive damages awarded in federal court.”). In particular, Mr. Parrish argues that the 20-to-1 ratio of punitive damages to compensatory damages, as well as the difference between the punitive damages award and the criminal penalties for comparable misconduct, indicate excessiveness. The court disagrees. There is no “mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case.” Gore, 517 U.S. at 583. After considering the cited guideposts, as well as the reprehensibility of the Mr. Parrish’s conduct – which is “[p]erhaps the most important indicium of the reasonableness of a punitive damages award” – the court finds that the award of punitive damages against Mr. Parrish is not excessive. See id. at 575.

#### Motions by the County

The County seeks judgment as a matter of law, a new trial, or a remittitur. One of the arguments by the County for judgment as a matter of law is that Sheriff Johnny Nunley, whose misconduct spawned this action, “was acting as a state agent in his participation in the arrest of the Plaintiff.” (County’s Motion ¶ 2). To support this argument, the County relies upon Echols v. Parker, a § 1983 case where the Fifth Circuit held that “[a] county official pursues his duties as a state agent when he is enforcing state law or policy.” 909 F.2d 795, 801 (5<sup>th</sup> Cir. 1990). The

County's reliance on Echols is misguided. In Echols, the Fifth Circuit addressed the State of Mississippi's liability for attorney's fees, not a county's liability for the misconduct of its officials. Indeed, the Fifth Circuit recognized in Echols that "[i]t may be possible for the officer to wear both state and county hats at the same time . . . ." Id. at 801. Here, Sheriff Nunley was wearing a county hat. "Sheriffs in Mississippi are final policymakers with respect to all law enforcement decisions made within their counties." Brooks v. George County, Miss., 84 F.3d 157, 165 (5<sup>th</sup> Cir. 1996). Therefore, the County's motion shall be denied on this point.

Another argument by the County for judgment as a matter of law is that the Sheriff acted "in the pursuit of a personal vendetta . . . ." (County's Motion ¶ 5). In particular, the County argues that

regarding the allegations of destruction of property, planting of dope, and bribery, the evidence does not show that the individual defendants misused power possessed only by virtue of their office or that their actions were made possible only because they were clothed with state authority. Under these circumstances, the individual defendants did not act under color of state law and the County is not liable under § 1983.

(County's Memorandum, p. 8). The court disagrees. In Turner v. Upton County, Texas, the Fifth Circuit held that a county may be liable under § 1983 where its sheriff "paid . . . an informant[] to plant methamphetamine on her business premises and then, acting under color of law, the sheriff seized the drugs pursuant to a search warrant, leading to her indictment for possession of a controlled substance." 915 F.2d 133, 134-35 (5<sup>th</sup> Cir. 1990). In Bennett v. Pippin, the Fifth Circuit held that a county may be liable under § 1983 where its sheriff raped a plaintiff, who was under investigation for attempted murder, because the sheriff's "relationship with [the plaintiff] grew out of the attempted murder investigation and because . . . he used his authority over the investigation to coerce sex with her." 74 F.3d 578, 586 (5<sup>th</sup> Cir. 1996). Applying these

authorities to the facts in this case, the court has little difficulty finding that the County may be liable for the misconduct of Sheriff Nunley. Accordingly, the County's motion shall be denied on this point.

The County's motion for a new trial should also be denied. The County bases this motion on the court's decision during trial to grant judgment as a matter of law for the Plaintiff as to liability, as well as some of the court's evidentiary rulings. As to the evidentiary rulings, the court finds that a new trial is not warranted. Nor is a new trial warranted as to the judgment as a matter of law on liability. Considering the facts in this case, no reasonable jury could have concluded that the County is not liable for the misconduct of Sheriff Nunley. See Boeing Co. v. Shipman, 411 F.2d 365, 374 (5th Cir.1969) (en banc) (enunciating standard), overruled in part on other grounds by Gautreaux v. Scurlock Marine, Inc., 107 F.3d 331 (5th Cir.1997) (en banc). Therefore, the County's motion for a new trial shall be denied.

However, the County's motion for remittitur should be granted because reasonable jurors could not have found the County liable for \$500,000.00 in compensatory damages. See id. Under the facts of this case, the largest amount of compensatory damages a reasonable jury could have assessed the County is \$100,000.00. In the opinion of this court, the award of \$500,000.00 was excessive and may have included an award of punitive damages. However, in a § 1983 action, a plaintiff may not recover punitive damages against a county. Newport v. Fact Concerts, Inc., 453 U.S. 247, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981). Therefore, the court shall grant the County's motions for a remittitur and shall reduce the award of compensatory damages from \$500,000.00 to \$100,000.00. The Plaintiff may accept or refuse this remittitur. See Deffenbaugh-Williams v. Wal-Mart Stores, Inc., 156 F.3d 581, 596 (5<sup>th</sup> Cir. 1998). If the Plaintiff refuses it, the court shall grant the County a new trial solely on the issue of

compensatory damages. See id.

Conclusion

Tishomingo County's motion for remittitur shall be granted. The remainder of the defendants' motions shall be denied.

A separate order in accordance with this opinion shall issue this day.

This the \_\_\_\_ day of November 1998.

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United States District Judge

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DEFENDANTS

ORDER DENYING MOTIONS FOR JUDGMENT AS A MATTER OF LAW,  
DENYING MOTION FOR NEW TRIAL,  
DENYING DEFENDANT PARRISH'S MOTION FOR REMITTITUR, and  
GRANTING DEFENDANT TISHOMINGO COUNTY'S MOTION FOR REMITTITUR

Pursuant to an opinion issued today, it is hereby ORDERED that

- (1) the Defendant Benny Parrish's motion for judgment as a matter of law is DENIED;
- (2) the Defendant Benny Parrish's motion for remittitur is DENIED;
- (3) the Defendant Tishomingo County's motion for judgment as a matter of law is DENIED;
- (4) the Defendant Tishomingo County's motion for remittitur is GRANTED; the award of compensatory damages is REDUCED from \$500,000.00 to \$100,000.00; if the Plaintiff refuses to accept damages in the amount of \$100,000.00, the court shall grant the County a new trial solely on the issue of compensatory damages;
- (5) the Defendant Tishomingo County's motion for a new trial is DENIED; the denial of this motion is conditioned upon the Plaintiff's acceptance of damages in a reduced amount;  
and
- (6) the Plaintiff shall notify the court in writing within 30 days from the date of this order as to whether he accepts or rejects the foregoing remittitur as to compensatory damages awarded against Tishomingo County.

SO ORDERED, this the \_\_\_\_ day of November 1998.

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United States District Judge